

MISSION STATEMENT

Monitoring Adherence to the BC Claims Task Force Report

INTRODUCTION 1

On June 28, 1991, representatives of the governments of Canada and British Columbia, and the First Nations Summit (the Principals) put their signatures to The Report of the British Columbia Claims Task Force. The report ushered in the era of modern-day treaty making across the province and recommended the establishment of the BC Treaty Commission itself.

Contained in this report are a number of recommendations. Recommendation 1 proclaims that: "The First Nations, Canada, and British Columbia establish a new relationship based on mutual trust, respect, and understanding — through political negotiations." The remaining recommendations, and the text of the report, provide further direction and information to the Treaty Commission, the Principals, and the parties on the conduct of those negotiations.

According to the Task Force Report, the Treaty Commission's role is to "ensure that the process is fair and impartial, that all parties have sufficient resources to do the job, and that the parties work effectively to reach agreements" (p.35).

The Treaty Commission continues to believe the Task Force recommendations are the cornerstone of the treaty process and that adherence to them is essential to effective negotiations and the achievement of fair and honourable final agreements.

10 RECOMMENDATIONS 2

The Treaty Commission has identified 10 of these recommendations as requiring particular attention. These are set out below in this mission statement, which also contains an analysis of the principles underlying the recommendations, as contained in the body of the Task Force Report.

Future monitoring of, and reporting on, treaty negotiations will be closely based on this analysis by the Treaty Commission of the principles underlying the relevant recommendations.

PROACTIVE MONITORING AND REPORTING 3

The Treaty Commission will be more public and assertive in taking stances to move treaty negotiations forward fairly and equitably, such as, for example, when any of the Principals or the parties do not adhere to the recommendations set out in this mission statement.

This approach is consistent with the Task Force Report, which calls on the Treaty Commission to report to the parties where progress is not being made or where major obstacles block progress, and clearly envisages public reporting on the effectiveness and fairness of the process or where the parties do not remove obstacles to progress. It is also in keeping with the recommendations of the effectiveness review of the Treaty Commission undertaken last year, and with the Treaty Commission's own internal examination of its priorities and mode of operation.

The Treaty Commission's reports may form part of its regular reporting responsibilities or may be issued on a table-specific or issue-specific basis. As envisaged in the Task Force Report, specific reports will first be made to the Principals or the parties, but would be the basis for public reporting where the issue is not addressed.

ANALYSIS OF KEY
RECOMMENDATIONS

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The following Task Force recommendations are those that the Commission has identified as requiring particular attention. The analysis of each recommendation is drawn from the body of the Task Force Report.

Recommendation 1: The First Nations, Canada, and British Columbia establish a new relationship based on mutual trust, respect and understanding — through political negotiations.

Analysis of the Task Force Report as it relates to this recommendation:

- > Recognition and respect for First Nations as self-determining and distinct nations must be the hallmark of the new relationship.
- > The three parties are equal participants in the negotiations.
- > Treaties must be fair and honourable and the items for negotiation should not be arbitrarily limited by any of the parties.
- > Treaties should be fully and completely implemented.
- > Negotiations should be fairly conducted. The duty of fairness must embody the following (BC Claims Task Force Report pp.34-6):
 - Commitment—Parties must have serious resolve and commitment to reach agreements and must match this commitment with sufficient resources to support the process.
 - Made in BC—The process should be made in BC;
 - Fair—The process should provide a level playing field and not disadvantage any party;
 - Impartial—No one party should have control of the process and all three parties should have equal management of the process;
 - Effective—Negotiations should be efficient and not create barriers to progress; and
 - Understandable—Each party should clearly understand its duties and responsibilities in the negotiation process.

Recommendation 2: Each of the parties be at liberty to introduce any issue at the negotiation table which it views as significant to the new relationship.

Analysis of the Task Force Report as it relates to this recommendation:

- > Each party should be free to raise its fundamental issues. There should be no unilateral restriction by any party on the scope of negotiations. This is key if treaties are to be lasting and the new relationship sustainable.

Recommendation 6: The treaty negotiation process be open to all First Nations in British Columbia.

Analysis of the Task Force Report as it relates to this recommendation:

- > The process must be open to all First Nations in British Columbia.
- > First Nations that have signed "Douglas Treaties" or Treaty 8 must not be excluded from the treaty process.
- > First Nations whose traditional territories are now covered by urban areas must not be excluded from the treaty process.
- > The term "First Nation" may refer to an organization of aboriginal people under traditional government, tribal council, band or some combination of these systems.²

Recommendation 8: First Nations resolve issues related to overlapping traditional territories among themselves.

Analysis of the Task Force Report as it relates to this recommendation:

- First Nations must discuss overlaps with neighbouring First Nations in preparing for negotiations.
- A process for resolving overlaps should be in place before a treaty is concluded.
- The Treaty Commission can provide advice on dispute resolution services.

Recommendation 9: Federal and provincial governments start negotiations as soon as First Nations are ready.

Analysis of the Task Force Report as it relates to this recommendation:

- All parties must view the negotiation of treaties as urgent.
- The federal and provincial governments must be prepared to begin negotiations as soon as First Nations are ready.
- There should be no limit on the number of concurrent negotiations.

Recommendation 10: Non-aboriginal interests be represented at the negotiating table by the federal and provincial governments.

Analysis of the Task Force Report as it relates to this recommendation:

- Non-aboriginal interests should have the opportunity to contribute to the new relationship, if it is to be workable.
- To achieve this, the federal and provincial governments should establish effective consultation mechanisms.
- The parties may wish to consider special procedural arrangements to involve non-aboriginal interests during the negotiations.

Recommendation 11: The First Nation, Canada, and British Columbian negotiating teams be sufficiently funded to meet the requirements of the negotiations.

Analysis of the Task Force Report as it relates to this recommendation:

- First Nations should be adequately funded if they are to participate in negotiations on an equal footing.
- First Nations should not have their expenditures reviewed by other negotiating parties.
- Federal and provincial governments should commit substantial resources throughout their structures, especially as there may be significant changes in jurisdictions, rights, and services.

Recommendation 15: The parties select skilled negotiators and provide them with a clear mandate, and training as required.

Analysis of the Task Force Report as it relates to this recommendation:

- Parties should recruit, train, and develop negotiators.
- Negotiators should have clear instructions and sufficient authority to negotiate effectively.
- Negotiators should be sufficiently informed and sensitive to gauge the likelihood of the parties approving agreements they endorse.
- Negotiators should have timely access to senior officials and relevant ministers and should represent the government as a whole, not one ministry/department.
- First Nation negotiators should have timely access to leadership and maintain contact with the communities they represent.

Recommendation 16: The parties negotiate interim measures agreements before or during the treaty negotiations when an interest is being affected which could undermine the process.

Analysis of the Task Force Report as it relates to this recommendation:

- › Interim measures are a way of balancing the interests of the parties prior to the completion of treaty negotiations (i.e., they are an early expression of mutual recognition).
- › Interim Measure negotiations can be initiated at any time.
- › There is a range of options for Interim Measures. The option must fit the circumstances.
- › They may be negotiated on a sector-wide basis.
- › They may require enabling legislation.
- › They should not displace treaty negotiations or limit their scope.

Recommendation 18: The parties in each negotiation jointly undertake a public information program.

Analysis of the Task Force Report as it relates to this recommendation:

- › The new relationship will require aboriginal and non-aboriginal people to understand each other and work together.
- › Public information initiatives that are tripartite provide more consistent information than initiatives undertaken individually by each party.
- › Meetings between all negotiators and affected communities can pay significant dividends.
- › Face-to-face meetings have the deepest and most lasting effect.
- › Meetings between aboriginal and non-aboriginal people should be encouraged.

FURTHER STEPS

5 Over the months ahead, the Treaty Commission will examine and report to the Principals on other aspects of its mandate and activities, including the other recommendations put forward during the course of the effectiveness review, such as those regarding the Treaty Commission's enhanced role in dispute resolution, ongoing readiness assessments, funding suspensions, and so on.

The Treaty Commission's key objectives in undertaking this examination will be to identify specific barriers to progress, including mandate issues, and to promote effective and fair negotiations that result in the successful and lasting agreements envisaged in the BC Claims Task Force Report.

¹ Prior to this date, only the Nisga'a were engaged in modern-day treaty negotiations. These negotiations took place outside the BC treaty process. Currently, the BC treaty process encompasses 55 First Nations at 43 tables, or approximately two-thirds of BC's First Nation's population.

² See Task Force Report Recommendation 7 and supporting discussion, pp.49-52. Recommendation 7 reads: "The organization of First Nations for the negotiations is a decision to be made by each First Nation."